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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 683, Misc.

WILLIAM B. HARTSFIELD,
Petitioner,

v.

HONORABLE BOYD SLOAN, United States District Judge for the Northern District of Georgia,
Respondent.

BRIEF

(Under Rule 31(3) of the Supreme Court of the United States) of John Sammons Bell, as Chairman of the Georgia State Democratic Executive Committee; George D. Stewart, as Secretary of the Georgia State Democratic Executive Committee; The Georgia State Democratic Party in Opposition to the Motion of William B. Hartsfield for Leave to File a Petition for a Writ of Mandamus.

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The respondent-objectors are the defendants in the case from which the motion stems. They have been advised that they have the right under the Rules of the Supreme Court to file this response and these objections at this juncture.

At the threshold, these objectors respond to the "Statement of Jurisdiction," and "Questions Presented" (R. p. 3). We believe that our response to those portions of the petition should suffice to show that the motion should not be granted.

We respectfully suggest:

Even if the law and the rules of the Supreme Court should be construed so as to authorize the Court to issue the writ of mandamus which will be sought if the motion is granted, the Court should not in the present posture of the case, exercise that authority.

In order that the Court may have the full facts before it and may thereby know the present posture of the case, it is necessary to add to the end of the "Statement of the Case" as it appears on pages 6-8 of the Hartsfield motion and petition the following:

The Court will perceive that the motion of the present objectors upon which the Judge below proceeded in paragraph 9 thereof (R. p. 30), averred that the District Judge to whom the complaint was presented had authority to dismiss it for want of jurisdiction when the question involved is the complaint lacked the necessary substance, and moved the Court "to declare that the action is not one for consideration by a three judge court or to dismiss the action" (R. p. 30).

The Judge, after hearing arguments and considering briefs, on April 1, 1958, rendered an opinion concluding: ". . . this court refuses to convene a three-judge court as prayed in the complaint" (R. p. 25).

The Court did not pass on the alternate prayer of the motion—"to dismiss the action" (R. p. 30).

As this is written, May 7, 1958, the Court has passed no order on the motion to dismiss.

We respectfully submit that our suggestions hereinbefore made are sound, and should dispose of the motion.

The suggestions are based on the following:

Counsel for the petitioner contend that the power and jurisdiction of this Court to issue the writ of mandamus sought are sustained by:

Ex Parte Bransford, 310 U. S. 354 (1940);
Ex Parte Poresky, 290 U. S. 30 (1933);
Ex Parte Metropolitan Water Co., 220 U. S. 539 (1911).

At the time these three cases were decided, the statute as to the duty of a trial judge in convening a three-judge court was Judicial Code, Section 266, 28 U. S. C., Section 380, which provided:

> "Whenever such application . . . is presented to . . . a judge, **he** shall immediately call to his assistance to hear and determine the application two other judges . . ."

That statute no longer exists.

The present governing statute is Title 28 U. S. C., Section 2284 (1), which provides:

> "The District Judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding."

We think the District Judge still has the right to declare that the case is not one for a three judge Court. That was the reason for the language in the motion filed below (R. p. 30) . . . that the Court declare the action not one for consideration by a three judge court. While in his

opinion the Court refused "to convene a three judge court as prayed in the complaint" (p. 25), that refusal must be read in the light of our motion and petitioner's prayer in his original petition, "that a court consisting of three judges be convened . . ." (p. 45).

So, under the present statute, the action of the District Judge is reviewable by appeal to the Court of Appeals for the Fifth Circuit as will be seen more in detail hereinafter.

At the present juncture, though, we respectfully request the Court to consider what would happen if the prayer of the petition for mandamus (p. 20) were granted in the light of the existing statute [Title 28, U. S. C. 2284(1)]. This Court is requested to direct Judge Sloan to vacate his order of April 1, 1958, "and to convene without delay the three judge court . . ."

Even if the case were a proper one for a three judge court, Judge Sloan would not "call to his assistance two other judges." His duty would, in a proper case for a three judge court, be to "immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge."

The prime effect of this change in the statute is to demonstrate that now the Courts of Appeals of the respective circuits have jurisdiction of the subject matter. A secondary effect is that if the Supreme Court should under the "all writs statute" (Title 28, U. S. C. 1651) deem it legal, necessary and proper to issue the writ of mandamus, the writ, to be effective, would have to be directed to the Chief Judge of the Circuit.

But, it seems to us:

(1) That the Supreme Court has by its new rules limited its jurisdiction so as to exclude the proposed petition;

(2) That applicable decisions since the passage of Title 28—2284 demonstrate that the question of whether a three judge court should be convened can and should be decided by the appropriate Circuit Court of Appeals. The matter is now one within its appellate jurisdiction, and can be decided either upon a direct appeal, or by mandamus proceeding. The "all writs" statute is just as available to a Circuit Court of Appeals as it is to the Supreme Court.

With respect to the Rules of the Supreme Court: Rule 30 (U. S. C. A., Title 28—Rules) provides:

> "The issuance by the court of any writ authorized by 28 U. S. C. A., Sec. 1651 (a), is not a matter of right but of sound discretion sparingly exercised." (Citing cases "by way of illustration only.")

Then Rule 31 (3) provides:

> "If the petition seeks issuance of a writ of mandamus . . . , it shall set forth with particularity **why the relief sought is not available in any other court**." (Emphasis supplied.)

The petition here does not and cannot comply with that rule.

The relief sought is available in the Circuit Court of Appeals even in the present posture of the case. There would be no doubt whatsoever on that question if Judge Sloan acted upon our motions to dismiss.

With respect to applicable decisions: **Ex Parte Cogdell**, 342 U. S. 163, 72 S. Ct. 196, 96 L. Ed. 161, was decided December 11, 1951. The headnote of that case as it appears in 72 S. Ct. is:

> "Where question, whether statute requiring that three judge court hear applications for injunctions restraining enforcement, operation or execution of act

of Congress for repugnance to Constitution, applies to suit to enjoin enforcement of congressional enactment affecting only District of Columbia, was before Court of Appeals as necessary adjunct of determination of its jurisdiction to hear appeal from denial of a motion to convene three judge court, mandamus proceeding to compel convening of three judge court would be continued by Supreme Court to await views of Court of Appeals on such issue, since question was one of general importance to judicial administration in District of Columbia. 28 U. S. C. A., Secs. 1253, 2282."

While, presently, there is no appeal to the Court of Appeals pending, the **relief sought here is available there.**

"Subject to review, trial judge may determine whether case requires statutory three-judge court."

Schermerhorn, Inc., v. Holloman, 74 F. 2d 265 (1). Certiorari denied 294 U. S. 721.

That case arose under the old statute (28 U. S. C., Sec. 380). The trial judge had refused to convene the Court and dismissed the bill.

Even if the "dismissal of the bill" is a prerequisite to jurisdiction of the Court of Appeals, which we deny, certainly this Court will, before passing on the motion here before it, await the action of the District Judge on the motion to dismiss pending before him.

Since the change in the three-judge statute, the Tenth Circuit Court of Appeals has decided **Wicks v. Southern Pacific Co.,** 231 F. 2d 130, and at page 135 quoted from the Schermernorn case as follows:

"A trial judge is authorized to determine in the first instance whether a case is one requiring disposition by a special court convened in accordance with the statute, and he is not required to call two additional

judges to his assistance unless the case is of that nature (cases cited). **His decision upon the question is subject to review.**"

The Court then held that it had jurisdiction to entertain and dispose of the appeal. (Certiorari denied, 351 U. S. 946, 76 S. Ct. 845.)

If it had jurisdiction to entertain and dispose of the appeal, certainly it would have had jurisdiction to entertain a petition for mandamus, prior to the dismissal of the action by the trial judge. (Section 1651 of Title 28) seeking to compel him "immediately to notify the chief judge of the circuit" under Title 28, U. S. C., Sec. 2284.

The late Judge John J. Parker wrote for the Fourth Circuit Court of Appeals in **Jacobs v. Tawes**, 250 F. 2d 611, decided December 26, 1957. At page 615 he said:

> "If the single District Judge in dismissing the case for lack of jurisdiction commits error, the error can be corrected by appeal to the Court of Appeals without burdening the Supreme Court with a direct appeal."

And, he might have alluded to the burden on the trial judge imposed by the grant of a writ of mandamus. The Supreme Court considered that factor when in **Bankers Life & Casualty Co. v. Holland, Judge**, 346 U. S. 379, the Court said:

> "Mandamus, prohibitions and injunctions against judges are drastic and extraordinary remedies. We do not doubt power in a proper case to issue such writs. But they have the unfortunate consequence of making the judge a litigant, obliged to obtain personal counsel or to leave his defense to one of the litigants before him. These remedies should be resorted to only where appeal is a clearly inadequate remedy . . . As extraordinary remedies, they are reserved for really extraordinary causes."

The Judge below was correct in his ruling that this is not a case for a Three Judge Court.

The Judge was authorized to hold that this is not a case for a three Judge Court, either if:

(a) The question presented by the complaint is obviously without merit; or

(b) Because its unsoundness so clearly results from the previous decisions of the Supreme Court of the United States as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.

Citing cases (R. pp. 22-25), the Judge based his opinion on the second prong of the rule.

Counsel for the petitioner say (R. pp. 9-10):

> "This Court has not upheld the constitutionality of the county unit system in any case arising under the statute attacked, or in any other decision,"

and,

> "Moreover, the fact that this Court may uphold a lower court's discretionary refusal to lend the aid of equity to protect the right to vote cannot justify the refusal of the court below to convene a three-judge court" (R. p. 17).

Palpably, these are statements of petitioner's concepts of what happened when this question was here before.

Let us see what the record discloses.

South v. Peters, 89 F. Supp. 672, was decided by a majority of a Three Judge Court composed of Circuit Judge Samuel H. Sibley, and District Judges Davis and Andrews, the latter dissenting. At page 674 under the heading "the issues" the opinion commenced:

"The Georgia Statute attacked is the Act of August 14, 1917, now codified in Georgia Code of 1933 as Sections 34-3213 through 34-3218 relating to primary elections and commonly known as the Neill Primary Act." (This is the same Act attacked in the instant suit. R. p. 43.)

The Court (op. cit. 678) deemed the crucial questions for decision to be:

1. "Does the federal Constitution forbid that a State may, in an election affecting the whole State, or a portion thereof, subdivide the territory affected into smaller units, to wit, counties, for the purpose of taking the vote and ascertaining the result, the subdivisions having materially different populations?"

2. "Is the question of the propriety of such subdivisions a political question of which a court of equity may not take cognizance?"

At page 680, the Court answered the questions:

1. "The Federal Constitution does not take from the States their right to set up their own internal organization and prescribe the manner of State elections. **We do not think the Fourteenth Amendment condemns the Neill Primary Act as to them.**" (Emphasis added.)

2. "If there is a political wrong, the remedy is in the State Legislature which can so amend the Act as to deal with Fulton County specially. Certainly, this court of equity should not adjudge the matter."

(Previously [p. 678] the court had said that the questions would be discussed "as though the primary was a true election, but also noting the difference between the two." Thus, the complaining party was given the benefit of every doubt).

When the case reached the Supreme Court (339 U. S. 276; 70 S. Ct. 641), the Court (7 to 2) foreclosed the subject and left no room for legal inference that the question sought to be raised could be the subject of legal controversy by citing previous decisions of the court and saying:

> "The court below dismissed appellants' petition. We affirm. Federal Courts consistently **refuse to exercise their equity powers** in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." (Emphasis added.)

Judge Sloan was eminently correct when he paid no heed to the argument that the Civil Rights Act of 1957 had changed the situation.

The three-judge court in South v. Peters decided the case, answered the first question propounded, assuming that it had the jurisdiction, the power so to do. It simply wouldn't exercise that power and grant the injunction because it thought the Neill Primary Act was valid. The Supreme Court, in affirming, assumed that the Federal courts had "equity powers" to entertain the case but that they would not be exercised in cases posing political issues.

If the trial court did not have power and jurisdiction in South v. Peters, or, to put it a little differently, if the complaint there, which is in almost exactly the same language as the complaint here, did not present a substantial federal question, the Civil Rights Act of 1957, in adding subsection (4) to 28 U. S. C., Section 1343, did not grant such jurisdiction or cause the same facts and allegations to present a substantial federal question. This is so because 28 U. S. C., Section 1343, as so amended, does not enlarge the jurisdiction of the federal courts so as to permit actions to recover damages or to secure equitable or other relief for the protection of the right to vote in a party primary to nominate candidates for state offices.

The amendment to 42 U. S. C., Section 1971, does protect the right to vote, but is expressly limited in its scope to the right to vote in general, special or primary elections for certain enumerated federal offices. It is clear, therefore, that no right of the plaintiff protected by either 42 U. S. C., Sec. 1971 (a) or 42 U. S. C., 1971 (b) is here asserted. Consequently, the amendment to 28 U. S. C., Sec. 1343, neither enlarges the jurisdiction of the court nor makes a substantial federal question where none existed before.

Certainly, Title 42 U. S. C., Section 1983, is not such an Act as is contemplated by the addition of subsection (4) for most assuredly the right of a member of a political party to participate in the nominating process of his political party is not a right, privilege or immunity secured by the Constitution. (See **Minor v. Happersett**, 21 Wallace 162.)

Recently (1952), the Supreme Court in the case of **Remmey v. Smith**, 342 U. S. 916, 72 S. Ct. 368, 96 L. Ed. 685, denied an application for certiorari sought to review a decision of a three-judge court headed by Circuit Judge Biggs and reported 102 Federal Supplement 708.

In the opinion of District Judge Bard, concurring with the holding that the suit should be dismissed, is this language:

> "The Civil Rights Acts, upon which this suit is based, provide redress for violations of federal rights. The crucial question is what **federal** right is violated by the Pennsylvania legislature's failure to reapportion the **state** legislative districts every ten years in accordance with the **state** constitution.
>
> "The free and untrammeled right or privilege of suffrage is not given by any Articles of or Amendments to the Federal Constitution. The Constitution guarantees a republican form of government only to

the extent that the citizens of the various states are to select their own form of government, as they did in the original thirteen states, and to the extent that the states are duty bound to provide a government 'by the people.' This, however, is the full limit of national control of state affairs, and the state assumes absolute control thereafter. U. S. Const. Art. IV, Sec. 4; Minor v. Happersett, 21 Wall. 162, 170-176, 22 L. Ed. 627; Keogh v. Neely, 7 Cir., 50 F. 2d 685.

"The Fourteenth Amendment did not add any right to vote; it only guaranteed additional protection to the rights and privileges a citizen already had. Minor v. Happersett, supra.

"Appropriate here are the words of Mr. Justice Peckham in Pope v. Williams, 193 U. S. 621, at page 632, 24 S. Ct. 573, 575, 48 L. Ed. 817: 'The privilege to vote in any state is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States. Minor v. Happersett, 21 Wall. 162, 22 L. Ed. 627. It may not be refused on account of race, color or previous condition of servitude, but it does not follow from mere citizenship of the United States. **In other words, the privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper,** provided, of course, no discrimination is made between individuals in violation of the Federal Constitution.' (Emphasis added.)

"What types of discrimination in state elections are forbidden by federal law? Section 1 of the Fifteenth Amendment and Section 31 of Title 8, U. S. C. A., prohibit discrimination on the ground of race, color or previous condition of servitude. The Nineteenth Amendment bans discrimination on account of sex. To interpolate into these provisions the right that

an individual's vote in an election for state offices should not be diluted by unequal apportionment but should be equal in weight to each other vote cast in the state would be legislative action by judicial pronouncement."

Only where the "deprivation" is on account of the race of the alleged member of the political party has the rule of Minor v. Happersett (alluded to by Judge Sibley), been changed. That is the self-evident meaning of **Nixon v. Herndon**, 273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759. There holding invalid, as contravening the Fourteenth Amendment, a Texas statute forbidding negroes to participate in Democratic party primaries in Texas, Justice Holmes noted that while the amendment applies to all, it was passed "with a special intent to protect the blacks from discrimination against them." The gist of the holding is in the last sentence of the opinion: "States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case."

The gist of the Hartsfield action is contained in paragraphs 31, 33, 34 and 35 thereof (R. pp. 42-44).

His contention is that the County Unit Statutes (Ga. Code, Sections 34-3213 through 34-3218) dilute, diminish and abridge his vote and right to vote and constitute a deprivation of his liberty and property by the State of Georgia without due process of law.

What had the courts said as to this right to vote in a primary? What had the courts said as to the nature of this right of which he claimed to have been deprived? Did what the courts had said justify Judge Sloan in holding that the subject matter of the complaint had been

foreclosed and left no room for inference that the question could be the subject of controversy?

Hartsfield alleged himself to be within that class of persons qualified as electors within the meaning of Georgia constitutional provisions. (Art. II, Section I, paragraphs I-IV, Georgia Code Annotated, Sections 2-701-704.)

In 1951, one W. M. Cox sued, in a Georgia state court, the officers of the Democratic Party of Georgia for damages claiming that he had been discriminated against by the application of the county unit system, and thus deprived of the "equal protection of the laws" guaranteed by the Fourteenth Amendment. He claimed to have been deprived of his right to vote guaranteed by certain of the same sections of the Georgia Constitution relied on by Hartsfield, notably those embraced in the Code as Sections 2-701, 2-702, 2-704.

A general demurrer to his petition was sustained. The case came to the Supreme Court of Georgia (208 Ga. 498).

In the body of the opinion, the Court explicity held that "The right to vote for Governor in a Democratic primary does not arise under the Constitution or laws of the United States" (p. 502) and quoted at page 505, thus: "A primary election is merely a substitute for a convention. It is not an election to office, it being distinguishable from an election of officers in that it precedes such election and is merely a choice of candidates or nominees of political parties, while an election is the final choice of the entire electorate."

The Court called attention to the contention of the plaintiff that the right to vote in such a primary does arise under the Constitution and laws of the State of Georgia, and that the equal protection clause of the Fourteenth Amendment to the Federal Constitution protected him in this right (op. cit. 502).

That contention was answered in the categorical ruling of the Court in the headnote, as follows:

> "A party primary held under the provisions of Code Section 34-3213 merely chooses candidates or nominees of a political party to be submitted to the entire electorate in the general election, and is not an 'election' within the meaning of that term as used in the statutory and constitutional provisions of Georgia conferring upon its citizens the right to vote in an election; and the right to participate in such a primary does not come within the protection of the Fourteenth and Fifteenth amendments to the Federal Constitution."

That part of the quoted headnote down as far as the semi-colon is the State Supreme Court's construction of the State constitution.

At page 18 of the motion here under consideration, counsel for the movant discuss **Cox v. Peters**, and say that it is in

> "diametic (sic) opposition to the holding in **Chapman v. King**, supra, to the effect that the Georgia Democratic Primary is constitutionally protected. . . . The theory of the Georgia Court in the Cox case is so utterly foreign to the past and recent expressions of this Court as to obviate serious consideration."

Counsel evidently were there referring to that part of the headnote which followed the semi-colon, but counsel must have known that the Georgia Supreme Court allued to Chapman v. King and said of it:

> ". . . but an examination of the opinion in that case will show that this statement (that the primary in Georgia was made an integral part of the election machinery) was predicated in part upon the pro-

visions of article 2, section 1, paragraph 8, of the Constitution of 1877 (Code of 1933, Sec. 2-608). This provision in the amendment of 1908 of the Constitution of 1877 was stricken and omitted from the Constitution of 1945; and an examination of the minutes of the Constitutional Commission, Vol. I, page 112, will disclose that it was purposely stricken and omitted from the present Constitution of this State so as to take the party primaries without the ruling in Smith v. Allwright, 321 U. S. 649 (supra), and leave them purely party primaries."

Whether this elimination from the Georgia Constitution had the intended effect, or not, is not important in the case at bar. Assuming for the sake of the argument, that Georgia's primary, when and if held, is still an integral part of the election machinery, that fact would not help Mr. Hartsfield's case. Chapman v. King does not govern his case for the categorical ruling there was this and only this:

> "The exclusions of voters made by the party by the primary rules became exclusions enforced by the State and **when these exclusions are prohibited by the Fifteenth Amendment because based on race or color**, the persons making them effective violate under color of law a right secured by the Constitution and laws of the United States within the meaning of the statute which is here sued on." (154 F. 2d at page 464; emphasis supplied.)

The ruling in **Smith v. Allwright**, 321 U. S. 649, was that the right of a citizen of the United States to vote for the nomination of candidates for the **United States Senate and the House of Representatives** in a primary which is an integral part of the elective process is a right secured by the Federal Constitution, and that right might not be abridged by the State on account of his race or color. The

action of the party there was held to be state action in violation of the **Fifteenth Amendment.**

Counsel for movant also refer to **Terry v. Adams**, 345 U. S. 461. That case too is ruled by the Fifteenth Amendment.

All of this, the Supreme Court of the United States must have had in mind when Cox v. Peters reached it on appeal (342 U. S. 936). Mr. Justice Black and Mr. Justice Douglas were of the opinion that probable jurisdiction should be noted, but Chief Justice Vinson, and Associate Justices Frankfurter, Jackson, Burton, Reed, Minton, Clark, thought that the motion to dismiss should be granted. It was. The appeal was dismissed "for the want of a substantial federal question." A motion for rehearing was denied. . . . 343 U. S. 921. If there was no substantial federal question there, certainly there is none here, and Judge Sloan was eminently correct when he said that the "federal question sought to be raised here is unsubstantial for the reason that the previous decisions of the Supreme Court of the United States foreclose the subject and leave no room for inference that the question sought to be raised can be the subject of controversy.

In basing his finding on the "second prong" it was not necessary for Judge Sloan to find that the Supreme Court had "upheld the constitutionality of the county unit system." It was merely necessary for him to find what he did find, a finding that is indisputably correct.

Of what legal right is Hartsfield deprived when he is permitted to vote in a primary conducted by the Democratic Party under the County Unit system? Hartsfield alleges (R. 32) that the Georgia State Democratic Executive Committee is the governing body of the defendant Democratic Party. As such, the Georgia Democratic Executive Committee could, so far as state law is concerned,

nominate a candidate for the offices named in Section 34-3212 of the Code. Or, the Georgia State Democratic Executive Committee could meet and call upon the County Executive Committees to send delegates to a convention which could nominate the candidates of the Democratic Party of Georgia for those offices. Of what right would Hartsfield be deprived in either of these instances? The answer is plainly "none". And if the Democratic Executive Committee gives him a greater right than he is entitled to by law, and grants him the privilege of voting at a primary voluntarily called by it, conducted under the County Unit system, how can he thereby be deprived of any constitutional right? The Fourteenth Amendment does not create rights. It merely protects rights in cases where it is applicable.

CONCLUSION.

Since **Colegrove v. Green,** 328 U. S. 549, 66 S. Ct. 1198, the Supreme Court has consistently held that such issues as are presented here do not constitute a substantive federal question.

The cases so holding are:

Colegrove v. Barrett (1947), 330 U. S. 804, 67 S. Ct. 973, 91 L. Ed. 1262;

McDougall v. Green (1948), 335 U. S. 281, 69 S. Ct. 1, 93 L. Ed. 3;

South v. Peters (1950), 339 U. S. 276, 70 S. Ct. 641, 94 L. Ed. 834;

Tedesco v. Board of Supervisors of Elections for Parish of Orleans (1950), 339 U. S. 940, 70 S. Ct. 797, 94 L. Ed. 1357;

Cox v. Peters (1952), 342 U. S. 936, 72 S. Ct. 559, 96 L. Ed. 697;

Remmey v. Smith, 342 U. S. 916, 72 S. Ct. 368, 96 L. Ed. 685;

Anderson v. Jordan (1952), 343 U. S. 912, 72 S. Ct. 648, 96 L. Ed. 1328;

People of State of Illinois v. Jarecki (1954), 346 U. S. 861, 74 S. Ct. 107, 98 L. Ed. 373;

Kidd v. McCarless (1957), 352 U. S. 920, 77 S. Ct. 223, 1 L. Ed. 2d 157;

Radford v. Gary (1957), 352 U. S. 991, 77 S. Ct. 559, 1 L. Ed. 2d 540.

We respectfully submit that the motion should be denied, and leave not granted to file the petition for the writ of mandamus against Judge Sloan.

CHARLES J. BLOCH,
Counsel for Respondents
and Objectors Named.

Proof of Service.

I, Charles J. Bloch, counsel for the respondents and objectors named, do hereby certify that on the ..... day of ....., 1958, I served copies of the foregoing Response and Objections on the several parties thereto, as follows:

1. On the Honorable Boyd Sloan, Judge of the United States District Court for the Northern District of Georgia, by mailing a copy in a duly addressed envelope, with first-class postage prepaid to him at Gainesville, Georgia, and another to him, care United States Post Office Building, Atlanta, Georgia;

2. On Ben W. Fortson, Jr., Secretary of State of Georgia, by mailing copies in duly addressed envelopes, with first-class postage prepaid, to Hon. Eugene Cook, the Attorney General, Judicial Building, Capitol Square, Atlanta, Georgia, and B. D. Murphy, Esq., Citizens and Southern National Bank Building, Atlanta, Georgia;

3. On William B. Hartsfield, Petitioner, by mailing copies in duly addressed envelopes with first-class postage prepaid, to each of the following:

Morris B. Abram,
1504 Healey Building,
Atlanta 3, Georgia.

Charles L. Weltner,
1405 Fulton National Bank Building,
Atlanta 3, Georgia.

Osgood O. Williams,
1018 Healey Building,
Atlanta 3, Georgia.

Maurice N. Maloof,
1504 Healey Building,
Atlanta 3, Georgia.

.....

Counsel for the Respondents and
Objectors Named.